

House Bill 141 (AS PASSED HOUSE AND SENATE)

By: Representatives Mills of the 25th and Hill of the 21st

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to
2 financial institutions, so as to update definitions; to provide for penalties for failure to
3 provide requested information by financial institutions; to include bank holding companies
4 in the definition of financial institutions; to include credit unions in restricted nomenclature;
5 to broaden the definition of legal lending limit; to provide for payment of dividends by
6 Subchapter S banks; to change the amount of par value; to provide for the investigative
7 powers of the Department of Banking and Finance; to provide for immunity from civil
8 liability for proper disclosure of information; to change certain provisions relative to the
9 renewal of licenses; to update the records required to be retained by a licensee; to prohibit
10 employment of persons that have a final cease and desist order entered against them; to
11 provide for transmittal of certain monies within five days; to provide that mobile check
12 cashing facilities are subject to regulation; to amend Code Section 10-1-393, relating to
13 unlawful unfair or deceptive practices in consumer transactions an in trade and commerce,
14 so as to provide further illustration of an unfair or deceptive trade practices applying to
15 financial and other business institutions; to provide for related matters; to provide for an
16 effective date; to repeal conflicting laws; and for other purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Chapter 1 of Title 7 of the Official Code of Georgia Annotated, relating to financial
20 institutions, is amended by revising paragraph (24) of Code Section 7-1-4, relating to
21 definitions relative to financial institutions, as follows:

22 "(24) 'Net assets' means the amount by which the total assets exceed the total debts of a
23 financial institution. Total assets shall include but not be limited to both tangible and
24 intangible assets (~~except good will~~), including prepaid expenses, prepaid taxes, and
25 accrued income using book values determined in accordance with generally accepted
26 accounting principles applicable to financial institutions. Total assets shall not include

intangible assets in the form of good will, core deposit intangibles, or other intangible assets related to the purchase, acquisition, or merger of a bank charter. Total debts shall include all liabilities, other than contingent liabilities, including accrued expenses, deferred or unearned income, and valuation reserves, all determined in accordance with generally accepted accounting principles applicable to financial institutions."

SECTION 2.

Said chapter is further amended by revising subsection (d) of Code Section 7-1-68, relating to reports to the Department of Banking and Finance and publication of summaries, as follows:

"(d) Any financial institution which fails to prepare or publish any report or to furnish any proof of publication, in accordance with this Code section, or fails to provide any facts or information requested under subsection (a) of this Code section, shall pay the department a penalty of \$100.00 for each day after the time fixed by the department for filing such report, making such publication, or furnishing such proof of publication, but the department may, in its discretion, relieve any financial institution from the payment of such penalty, in whole or in part, if good cause be shown. If a financial institution fails to pay a penalty from which it has not been relieved, the department may, through the Attorney General, maintain an action at law to recover it."

SECTION 3.

Said chapter is further amended by revising subsection (h) of Code Section 7-1-91, relating to orders by the Department of Banking and Finance, as follows:

"(h) The term 'financial institution' as used in this Code section shall include a bank holding company as defined in Code Section 7-1-605 and those entities required to be licensed pursuant to Article 4A of this chapter and any officer, director, employee, agent, or other person participating in the conduct of the affairs of the financial institution subject to the orders issued pursuant to this Code section."

SECTION 4.

Said chapter is further amended by adding a new subsection (a.1) and revising subsection (c) of Code Section 7-1-243, relating to restrictions on using bank and trust nomenclature, as follows:

"(a.1) Except as provided in subsection (c) of this Code section, no person or corporation except a credit union or a federal credit union shall use the words 'credit union', or any other similar name indicating that the business done is that of a credit union upon any sign at its place of business or elsewhere, or upon any of its letterheads, billheads, blank checks,

blank notes, receipts, certificates, circulars, advertisements, or any other written or printed matter."

"(c) Nothing in this Code section shall be construed to:

(1) Prevent the use of the words 'banks,' 'banker,' 'banking,' 'banker's,' 'trust,' or any similar word in a context clearly not purporting to refer to a banking or a trust business or to a business primarily engaged in the lending of money, underwriting or sale of securities, acting as a financial planner, financial service provider, investment or trust adviser, or acting as a loan broker;

(1.1) Prevent the use of the words 'credit union', or any similar word in a context clearly not purporting to refer to a credit union or to a business primarily engaged in the lending of money, or accepting shares or deposits or acting as a loan broker;

(2) Prohibit advertisement in media distributed in or transmitted into this state by persons or corporations lawfully engaged in the banking, credit union, or trust business outside of this state; or

(3) Prevent any person or corporation from continuing to use its name legally in use on April 1, 1989."

SECTION 5.

Said chapter is further amended by revising subsections (b) and (e) of Code Section 7-1-285, relating to limits on obligations to one person or corporation, as follows:

"(b) Except as provided in subsection (c) of this Code section, a bank shall not directly or indirectly make loans to any one person or corporation which in aggregate exceed 15 percent of the statutory capital base of the bank unless the entire amount of such loans is secured by good collateral or other ample security and does not exceed 25 percent of the statutory capital base. Except as otherwise indicated in subsection (c) of this Code section, the purchase or discount of agreements for the payment of money or evidences of indebtedness shall be regarded as indirect loans to the person or corporation receiving the proceeds of such transactions. ~~In estimating loans to any individual person, all amounts loaned to firms and partnerships of which he is a member shall be included.~~ In estimating the legal lending limit for any individual person, loans to related corporations, partnerships, and other entities shall be combined subject to regulations established by the department."

"(e) The department may, by regulation not inconsistent with this Code section, prescribe definitions of and requirements for transactions included in or excluded from the indebtedness to which this Code section applies. The department may also by regulation prescribe less restrictive limitations than those listed in subsections (a) through (c) of this Code section for banks meeting certain financial and management criteria. In addition, the department may, by regulation or otherwise, specify that the liabilities of a group of one

or more persons or corporations or both shall be considered as owed by one person or corporation for the purposes of this Code section because the group relies substantially on a common source for the payment of its obligations or makes common use of funds received by it, or meets other criteria established by the department for the combination of indebtedness for legal lending limitation purposes."

SECTION 6.

Said chapter is further amended by revising paragraph (2) of subsection (a) of Code Section 7-1-460, relating to restrictions on payment of dividends and limitation of actions for dividends or distributions, as follows:

"(2) Dividends may not be declared or paid at any time that the bank or trust company does not have the paid-in capital and appropriated retained earnings required by Code Section 7-1-411, except the department may approve the payment of dividends by a Subchapter S bank, prior to cumulative profitability, for the sole purpose of providing its shareholders with a source of funds to pay federal and state income taxes on the Subchapter S bank's income that is taxable to those shareholders;"

SECTION 7.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-651, relating to membership of credit unions, as follows:

"(a) The membership of the credit union shall consist of the initial subscribers and such other persons within the field of membership as may have subscribed to one share and have paid for same together with the required entrance fee and complied with all other requirements contained in the bylaws. No subscriber or other member shall hold more than one share out of any class of shares. The bylaws may provide for separate classes of shares for borrowers and depositors and for the par value of each share for each class but in no event shall the par value be less than ~~\$5.00~~ \$1.00."

SECTION 8.

Said chapter is further amended by adding new subsections (c) through (h) of Code Section 7-1-684.1, relating to examination of books and records of licensees by the Department of Banking and Finance, as follows:

"(c) The department, in its discretion, may:

(1) Make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated this article or any rule, regulation, or order under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

131 (2) Require or permit any person to file a statement in writing, under oath or otherwise
132 as the department determines, as to all the facts and circumstances concerning the matter
133 to be investigated;

134 (3) Disclose information concerning any violation of this article or any rule, regulation,
135 or order under this article, provided the information is derived from a final order of the
136 department; and

137 (4) Disclose the imposition of an administrative fine or penalty under this article.

138 (d)(1) For the purpose of conducting any investigation as provided in this Code section,
139 the department shall have the power to administer oaths, to call any party to testify under
140 oath in the course of such investigations, to require the attendance of witnesses, to require
141 the production of books, records, and papers, and to take the depositions of witnesses;
142 and for such purposes the department is authorized to issue a subpoena for any witness
143 or for the production of documentary evidence. Such subpoenas may be served by
144 certified mail or statutory overnight delivery, return receipt requested, to the addressee's
145 business mailing address, by examiners appointed by the department, or shall be directed
146 for service to the sheriff of the county where such witness resides or is found or where
147 the person in custody of any books, records, or paper resides or is found. The required
148 fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state
149 treasury for the use of the department in the same manner that other expenses of the
150 department are paid.

151 (2) The department may issue and apply to enforce subpoenas in this state at the request
152 of a government agency regulating sellers of checks or money transmitters of another
153 state if the activities constituting the alleged violation for which the information is sought
154 would be a violation of this article if the activities had occurred in this state.

155 (e) In case of refusal to obey a subpoena issued under this article to any person, a superior
156 court of appropriate jurisdiction, upon application by the department, may issue to the
157 person an order requiring him or her to appear before the court to show cause why he or
158 she should not be held in contempt for refusal to obey the subpoena. Failure to obey a
159 subpoena may be punished as contempt by the court.

160 (f) Examinations and investigations conducted under this article and information obtained
161 by the department in the course of its duties under this article are confidential, except as
162 provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In addition
163 to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is
164 authorized to share information obtained under this article with other state and federal
165 regulatory agencies or law enforcement authorities. In the case of such sharing, the
166 safeguards to confidentiality already in place within such agencies or authorities shall be
167 deemed adequate. The commissioner or an examiner specifically designated may disclose

such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department which is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

(1) The name, business address, and telephone, fax, and license numbers of a licensee or registrant;

(2) The names and titles of the principal officers;

(3) The name of the owner or owners thereof;

(4) The business address of a licensee's or registrant's agent for service;

(5) The terms of or a copy of any bond filed by a licensee or registrant; and

(6) The name, business address, telephone number, and fax number of all agents of a licensee.

(g) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited transactions furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this title; or

(3) For any such information furnished in complaints filed with the department.

(h) The commissioner or any employee or agent is not subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section."

SECTION 9.

Said chapter is further amended by revising Code Section 7-1-685, relating to renewal of licenses and the annual license fee, as follows:

"A license may be renewed for a period to be established by regulations of the department upon the filing of an application conforming to the requirements of Code Section 7-1-683 with such modifications as the department may allow. No investigation fee shall be payable in connection with such renewal application; but an annual license fee established by regulation of the department to defray the cost of supervision shall be paid with each renewal application, which fee shall not be refunded or prorated if the renewal application is approved. ~~If a renewal application is filed with the department before expiration of an~~

~~existing license, the license sought to be renewed shall continue in force until the issuance by the department of the renewal license applied for or until 20 days after the department shall have refused to issue such renewal license."~~

SECTION 10.

Said chapter is further amended by revising subsection (b) of Code Section 7-1-686, relating to a notice of action or change in number of locations by a licensee, as follows:

"(b) A licensee shall give notice to the department by registered or certified mail or statutory overnight delivery of the name and address of any new or additional locations at which it engages in the business of selling or issuing checks over the number previously reported in either its original or renewal application and shall show to the department that the bond or assets required under Code Section 7-1-683 have been increased accordingly.

This notice shall be given to the department by the licensee as follows:

(1) For the period January 1 through June 30 of each year, on or before the first business day of September; and

(2) For the period July 1 through December 31 of each year, on or before the first business day of March.

Failure to provide such notice shall be punished with a fine, other administrative action, or both. At any time the department is shown that a licensee has decreased the number of locations at or through which it proposes to engage in the business, the department may decrease the bond or security requirements accordingly."

SECTION 11.

Said chapter is further amended by revising subsection (a) of Code Section 7-1-687.1, relating to records required to be kept by licensee for a five-year period, as follows:

"(a) Each licensee shall make, keep, and reserve the following books, accounts, and other records for a period of five years:

(1) A record of each check sold;

(2) A general ledger which shall be posted at least monthly containing all assets, liabilities, capital, and income and expense accounts;

(3) Settlement sheets received from agents;

(4) Bank statements and bank reconciliation records;

(5) Records of outstanding checks;

(6) Records of each check paid; ~~and~~

(7) A list of the names and addresses of all of the licensee's agents;

(8) A copy of all Currency Transaction Reports that are required to be filed by the licensee; and

239 (9) For money transmitters, records of all money transmissions sent or received."

240 **SECTION 12.**

241 Said chapter is further amended by adding a new Code section to read as follows:

242 "7-1-689.2.

243 The department may not issue a license to an applicant and may revoke a license from a
244 licensee if such person employs any other person against whom a final cease and desist
245 order has been issued within the preceding five years if such order was based on a violation
246 of this article. Each applicant and licensee shall, before hiring an employee, examine the
247 department's public records to determine that such employee is not subject to a cease and
248 desist order."

249 **SECTION 13.**

250 Said chapter is further amended by adding a new subsection (d) of Code Section 7-1-692,
251 relating to prohibited actions by licensees, as follows:

252 "(d) All licensees or agents of licensees shall transmit monies received by them within five
253 business days of receiving such monies, unless the licensee's written terms and conditions
254 call for an agent to make an earlier transmission of funds. Failure to timely transmit funds
255 shall subject the licensee to fines and may result in the revocation of its license. In the case
256 of an agent, failure to timely transmit funds may result in the imposition of fines and the
257 designation of a licensee's agent being refused or suspended by the department."

258 **SECTION 14.**

259 Said chapter is further amended by revising Code Section 7-1-703, relating to license
260 renewal, as follows:

261 "A license or registration may be renewed for a period to be established by regulations of
262 the department upon the filing of an application substantially conforming to the
263 requirements of Code Section 7-1-701 with such modifications as the department may
264 specify and as may be necessary. No investigation fee shall be payable in connection with
265 such renewal application; but an annual license or registration fee established by regulation
266 of the department to defray the cost of supervision shall be paid with each renewal
267 application, which fee shall not be refunded or prorated if the renewal application is
268 approved. If a renewal application is filed with the department before expiration of an
269 existing license, the license sought to be renewed shall continue in force until the issuance
270 by the department of the renewal license applied for or until 20 days after the department
271 shall have refused to issue such renewal license."

SECTION 15.

Said chapter is further amended by revising subsection (b) and adding a new subsections (e) through (i) of Code Section 7-1-704, relating to enforcement of provisions by the Department of Banking and Finance, as follows:

"(b) To assure compliance with the provisions of this article and in consideration of any application to renew a license or registration pursuant to the provisions of Code Section 7-1-703, the department or its designated agent may examine the books and records of any licensee or registrant to the same extent as it is authorized to examine financial institutions under this chapter. Each licensee or registrant shall pay an examination fee as established by regulations of the department to cover the cost of such examination. The department, in its discretion, may:

(1) Make such public or private investigations within or outside of this state as it deems necessary to determine whether any person has violated this article or any rule, regulation, or order under this article, to aid in the enforcement of this article, or to assist in the prescribing of rules and regulations pursuant to this article;

(2) Require or permit any person to file a statement in writing, under oath or otherwise as the department determines, as to all the facts and circumstances concerning the matter to be investigated;

(3) Disclose information concerning any violation of this article or any rule, regulation, or order under this article, provided the information is derived from a final order of the department; and

(4) Disclose the imposition of an administrative fine or penalty under this article."

"(e)(1) For the purpose of conducting any investigation as provided in this Code section, the department shall have the power to administer oaths, to call any party to testify under oath in the course of such investigations, to require the attendance of witnesses, to require the production of books, records, and papers, and to take the depositions of witnesses; and for such purposes the department is authorized to issue a subpoena for any witness or for the production of documentary evidence. Such subpoenas may be served by certified mail or statutory overnight delivery, return receipt requested, to the addressee's business mailing address, by examiners appointed by the department, or shall be directed for service to the sheriff of the county where such witness resides or is found or where the person in custody of any books, records, or paper resides or is found. The required fees and mileage of the sheriff, witness, or person shall be paid from the funds in the state treasury for the use of the department in the same manner that other expenses of the department are paid.

(2) The department may issue and apply to enforce subpoenas in this state at the request of a government agency regulating check cashing of another state if the activities

constituting the alleged violation for which the information is sought would be a violation of this article if the activities had occurred in this state.

(f) In case of refusal to obey a subpoena issued under this article to any person, a superior court of appropriate jurisdiction, upon application by the department, may issue to the person an order requiring him or her to appear before the court to show cause why he or she should not be held in contempt for refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by the court.

(g) Examinations and investigations conducted under this article and information obtained by the department in the course of its duties under this article are confidential, except as provided in this subsection pursuant to the provisions of Code Section 7-1-70. In addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the department is authorized to share information obtained under this article with other state and federal regulatory agencies or law enforcement authorities. In the case of such sharing, the safeguards to confidentiality already in place within such agencies or authorities shall be deemed adequate. The commissioner or an examiner specifically designated may disclose such limited information as is necessary to conduct a civil or administrative investigation or proceeding. Information contained in the records of the department that is not confidential and may be made available to the public either on the department's website or upon receipt by the department of a written request shall include:

(1) The name, business address, and telephone, fax, and license numbers of a licensee or registrant;

(2) The names and titles of the principal officers;

(3) The name of the owner or owners thereof;

(4) The business address of a licensee's or registrant's agent for service; and

(5) The name, business address, telephone number, and fax number of all locations of a licensee.

(h) In the absence of malice, fraud, or bad faith, a person is not subject to civil liability arising from the filing of a complaint with the department or furnishing other information required by this Code section or required by the department under the authority granted in this article. No civil cause of action of any nature shall arise against such person:

(1) For any information relating to suspected prohibited conduct furnished to or received from law enforcement officials, their agents, or employees or to or from other regulatory or licensing authorities;

(2) For any such information furnished to or received from other persons subject to the provisions of this title; or

(3) For any such information furnished in complaints filed with the department.

(i) The commissioner or any employee or agent is not subject to civil liability, and no civil cause of action of any nature exists against such persons arising out of the performance of activities or duties under this article or by publication of any report of activities under this Code section."

SECTION 16.

Said chapter is further amended by adding a new Code section to read as follows:

"7-1-707.2.

The department may not issue a license or registration to an applicant and may revoke a license from a licensee or a registration from a registrant if such person employs any other person against whom a final cease and desist order has been issued within the preceding five years if such order was based on a violation of this article. Each applicant, licensee and registrant shall, before hiring an employee, examine the department's public records to determine that such employee is not subject to a cease and desist order."

SECTION 17.

Said chapter is further amended by adding a new Code section to read as follows:

"7-1-707.3.

The operation of a mobile check cashing facility must be conducted in accordance with the rules of the department."

SECTION 18.

Code Section 10-1-393, relating to unlawful unfair or deceptive practices in consumer transactions, is amended in subsection (b) by adding a new paragraph to read as follows:

"(34) For any person, firm, partnership, business, association, or corporation to willfully and knowingly accept or use an individual taxpayer identification number issued by the Internal Revenue Service for fraudulent purposes and in violation of federal law."

SECTION 19.

This Act shall become effective on July 1, 2009.

SECTION 20.

All laws and parts of laws in conflict with this Act are repealed.